

ZONING BOARD OF APPEALS
MINUTES
August 16, 2005

Draft

Members Present

Barry Silverstein – Chairman
Ronald Critelli
MaryAnn Leenig
Marc Breimer
April Callahan

Members Absent

Maureen Kangas – Vice Chairman
Lynne Raver

Others Present

Rebecca Valk, Esq. – Acting ZBA Attorney
Edward Peters – Interim Zoning Administrator
Christopher Colsey – Director of Municipal Development

Notice of Appeal Hearing was published in the Beacon Free Press, The Poughkeepsie Journal and the Southern Dutchess News.

Notified of the variance requests were the Town Board, Town Fire/Building Inspector, Town Planning Board, New York State Department of Transportation, Dutchess County Department of Planning, Zoning Administrator and surrounding property owners.

The meeting of the Zoning Board of Appeals was called to order at 7:03 p.m. by the Chairman. He made announcements regarding the no smoking policy and the emergency exits and fire procedures.

Chairman Silverstein announced that Alternate Board Members Marc Breimer and April Callahan are sitting members for this meeting with full voting rights.

Chairman Silverstein called for comments or corrections to the minutes of the July meeting. Hearing none, he called for a motion to accept the minutes as written.

Marc Breimer made the motion to accept the minutes from the July 19, 2005 meeting.

MaryAnn Leenig seconded.

Motion Carried

Barry Silverstein - Aye
Ronald Critelli - Aye
MaryAnn Leenig – Aye
Marc Breimer - Aye
April Callahan – Aye

Old Business

Continued Public Hearing for:

Grid Number: 6054-08-910916/914920 Address: Meadow Lane

Application Number: ZB05-001, submitted by Lori Joseph Builders, is requesting the following variances; 1) front yard setback of 30ft where 35ft is the minimum 2) rear yard setback of 30ft where 40ft is the minimum 3) right yard setback of 15ft where 20ft is the minimum 4) lot size variance of 11,230sq ft where 20,000 is the minimum 5) lot depth of 100ft where 125ft is the minimum required in an R-20 Zoning District

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

This request is made by the applicant, who seeks relief from the Zoning Administrator's decision regarding Chapter 150-33.A. of the Code of the Town of Fishkill, New York.

Chairman Silverstein read the report from the Town Engineer regarding the water issue.

Mitch Berkey from Povall Engineering presented to the Board.

Mr. Berkey reminded the Board that the applicant is proposing a two-bedroom house on a lot that was originally approved back in the 1940's as part of the Beacon Hills Subdivision. It is a sub-standard lot according to today's standards. The applicant is requesting three setback variances of 5' each, the rear yard, front yard and right side yard. He reminded the Board and stated that although it has no bearing on this application, that several variances were granted in 2002, which have since expired.

Mr. Berkey referred to the Town Engineer's report that the lot does have Department of Health approval. They met with the Town Engineer, CAMO Pollution Control and Glen Scofield at the site regarding the drainage and water issues. In accordance with the letter, the applicant feels the issues have been satisfied. One issue that still needs to be resolved is who will be the one to do the drainage work on the road. Glen Scofield advised that he would help supply some of the materials. The applicant has no problem finding a suitable place to tie into the water.

Some of the concerns that were stated by the public in previous Public Hearings and correspondences have been addressed with this report. Most of the concerns were related to the drainage. The drainage is no longer going through the property down to the next road. It has been rerouted to a town owned piece of property approximately 200 feet to the east.

Mr. Berkey advised that the concerns have been addressed and requested that the Hearing be closed.

Chairman Silverstein asked if the applicant has opened up the line yet, or is it something that is going to be agreed upon. He asked if the applicant is waiting for the ZBA approval before digging. Mr. Berkey commented that there is currently no reason to dig up the road. It may be a condition of the ZBA approval. They don't want to dig up the road prematurely.

Chairman Silverstein called for questions or comments from the Board Members.

None voiced.

The Chairman advised the audience that the Board has gone through this appeal in depth and several questions have been asked. He asked that the audience not to infer anything just because the Board does not have many questions now.

The Chairman called for questions or comments from the floor.

Ronald Leenig, Beacon Hills, addressed the Board. Chairman Silverstein advised the audience that although Mr. Leenig is speaking as a resident, he is also a Town Board member.

Mr. Leenig reconfirmed that he is speaking as a resident of Garden Place. He requested that the ZBA Secretary read into the record when the property was purchased and the purchase price. Nancy Lecker stated that the first lot registered as 21 Meadow Lane was purchased on March 13, 2003 at \$15,000 and the second lot, which is 23 Meadow Lane, was purchased on January 8, 2003 at \$7,500. Mr. Leenig stated that this is a self-created hardship. The applicant knew what the zoning law was at that time and he purchased it anyways. Mr. Leenig stated Mr. Berkey advised that there were three variances but there were in fact more. Chairman Silverstein stated that there are actually five variances. There are three requesting footage, the lot size of approximately 8,800 sq.ft. less than the minimum and the lot depth which is 25ft less than the minimum.

Mr. Berkey advised that these lots were originally several pre-existing lots that have been combined. The applicant cannot change the depth of the lot nor can he change the size of the lots that were approved as part of a previous sub-division. Those may just be a formality of getting those approved. They are pre-existing. They pre-date zoning and should be grandfathered in.

MaryAnn Leenig stated that it is not grandfathered. The Chairman advised that the Board was not going to begin a pros and cons discussion regarding this issue.

The Chairman asked for verification that variances for the lot size and depth were being requested. Mr. Berkey confirmed that they were. Mr. Berkey commented that the history shows that one lot was purchased and then the second lot was purchased and the Board raised the question if an additional lot next to it could be purchased. The additional lot was not an option. The applicant has expended considerable money with Povall Engineering to go through this process and the cost of the lot should not have any bearing on this. Chairman Silverstein agreed that the cost has no bearing on the application.

Mr. Leenig stated that one of his concerns is that the applicant needs all of these variances including the area size for a spec house for profit. How will this help the neighborhood? It is another builder coming in, taking his money and running, leaving the residents to suffer with all of these homes crammed in one after the other. It has to stop. The residents have testified and a petition has been presented to the Board from the neighbors stating that it was not the right thing to do.

Donald Worthy asked if the property was zoned residential. Chairman Silverstein confirmed that it was. Mr. Worthy stated that this is not how America was built. It was built on opportunity. The parcel is zoned vacant residential land. It is pre-existing lot size. If it is zoned residential, he feels that a house should go there.

The Chairman called for any additional comments or questions. Hearing none, he called for a motion to close the Hearing.

Ronald Critelli made the motion to close the Public Hearing.

Marc Breimer seconded.

Motion Carried

Barry Silverstein - Aye
Ronald Critelli - Aye
MaryAnn Leenig – Aye
Marc Breimer - Aye
April Callahan - Aye

Grid Number: 5953-00-778438 Address: Melzingah Dam Rd

Application Number: ZB05-010, submitted by David Gianna and Denise Zottola, requesting the following variances. 1) front yard setback of 42.9ft where 75ft is required, 2) side yard setback of 37.9ft where 50ft is required, 3) minimum lot size of 1.52 acres where 4 acres is the minimum and 4) access to the property from other than the a main road.

Said requests are a violation of Chapters 150-33.A. and 150.26.A. of the Code of the Town of Fishkill.

Chairman Silverstein that the applicants have requested an adjournment until the September 20 meeting due to the fact that the Town of Fishkill's Engineer has not completed his report on the property.

April Callahan made the motion to adjourn the Public Hearing.

MaryAnn Leenig seconded.

Motion Carried

Barry Silverstein - Aye
Ronald Critelli - Aye
MaryAnn Leenig – Aye
Marc Breimer - Aye
April Callahan - Aye

New Business

Appeal #1

Grid Number: 6056-03-185090 **Address:** 90 Old Castle Point Rd

Application No. 2005-011, submitted by Charles Ropes III, requesting a 14ft variance to construct a garage and breezeway attached to the main structure, creating an 11ft side yard set back where 25ft is the minimum in an R-40 Zoning District.

Said request is a violation of Chapter 150-33.A. of the Code of the Town of Fishkill.

This request is made by the applicant, who seeks relief from the Zoning Administrator's decision regarding Chapter 150-33.A. of the Code of the Town of Fishkill, New York.

The Chairman read communications from the DC Department of Planning and from the Town of Fishkill Planning Board. Both cited this as a matter of local concern.

Charles Ropes presented to the Board. He stated that the existing home came with a single car garage. They would like to convert that into a family room and construct a two-car garage. The garage will encroach on the setback. Mr. Ropes stated that he did speak with his neighbor and she did not have a problem with it. The position of her house places her driveway on the other side of the house, so the two driveways are not set next to each other.

Mr. Ropes advised the Board that if he built the garage directly against the house without the breezeway, it would still encroach on the setback. They would like a separate entrance into the house and the breezeway would be part mudroom.

Chairman Silverstein called for questions from the Board Members. Hearing none, Mr. Ropes continued. He presented a full scale drawing of the garage and breezeway. He advised that the drawing did not show the entire house. Ron Critelli asked if the was a garage presently. Mr. Ropes advised that the garage has been partially converted. The drawing shows the french doors. Mr. Ropes confirmed that it was originally a garage. When they added a second floor on in 1999, they converted it. Mr. Critelli asked if it was now a finished room. Mr. Ropes stated that it has not been completed yet. It was part of the original building permit.

Chairman Silverstein asked what the distance was to the neighbor's house. Mr. Ropes advised that she is approximately 40ft from the property line. The overhead view shows the house and she has some mature white pines on her property. Ronald Critelli states that the map indicates 49ft.

Mr. Critelli asked Mr. Ropes why he couldn't reduce the distance of the breezeway. Mr. Ropes stated that his idea is to use it as a mudroom. This will help to keep mud out of the house. He advised that even if he placed the garage directly against the house, it would only be 10ft and the garage would still need a variance. He also stated that part of this is the esthetics. It felt that it wouldn't look right. Mr. Critelli asked why the garage could not go on the other side of the house. Mr. Ropes advised that to place the garage on that side, the driveway would have to be rerouted and it something that he really does not want to do. There are also electric, cable and telephone lines buried over there.

Rebecca Valk, Acting ZBA Attorney, noted the stairs in the garage and questioned how tall it was going to be. Mr. Ropes stated that the garage had a 10ft ceiling and there may be another 10ft to the peak. Ms. Valk asked what the second floor would be used for. Mr. Ropes stated that it would be used for storage. Ms. Valk stated that, legally, the taller it is, it needs to conform to the 25ft setback. Mr. Ropes advised that the rafter height may be 6ft.

MaryAnn Leenig asked for verification whether it was a single or double garage. Mr. Ropes advised that it is going to be a two-car garage.

Marc Breimer asked if why he wouldn't consider the other side of the house. Mr. Ropes stated that it would make the driveway that much longer. Mr. Breimer asked where his septic system was. Mr. Ropes indicated on the drawing that it was in the front left side of the house just below the current driveway.

Ronald Critelli asked what was next door to his property at the tree line. Mr. Ropes advised that it was his neighbor's house. The aerial view has the property line over further that it actually is. Ed Peters, Interim Zoning Administrator, advised the Board that the Lines are not accurate. There is a hedgerow on the right side of the property. Move the property line over to the left. Mr. Ropes pointed to the trees on the neighbor's property and advised the Board to follow it up to the back property line. It should match there.

The Chairman called for additional comments or question from the Board and the Floor. Hearing none, he called for a motion to close the Public Hearing.

Ronald Critelli made the motion to close the Public Hearing.

MaryAnn Leenig seconded.

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

MaryAnn Leenig - Aye

Marc Breimer - Aye

April Callahan - Aye

Chairman Silverstein advised Mr. Ropes that a decision will be made at the next meeting.

Appeal #2**Grid Number: 6256-04-623284 Address: 1750 Route 52**

Application Number ZB05-012, submitted by Sign-A-Rama, representing Blue Seal Feeds, Inc, requesting a 34 sq. ft. variance to replace the existing sign with a 70 sq. ft. sign where 36sq. ft. is the maximum allowed in an GB Zoning District.

Said request is a violation of Chapter 150-30.D of the Code of the Town of Fishkill.

This request is made by the applicant, who seeks relief from the Zoning Administrator's decision regarding Chapter 150-30.D. of the Code of the Town of Fishkill, New York.

The Chairman read the following communications:

The DC Department of Planning commented that a site visit was made on August 10. The current sign is non-conforming. It is quite visible and currently has an interchangeable letter tracking area on it. In addition, there is a wall sign facing Route 52. The reason for signage is for business identification. They cautioned the ZBA that a larger sign may result in other businesses requesting similar signage, competing for visibility. The DC Department of Planning noted that there is no substantial justification for a larger sign. It is their recommendation that the variance be denied. If the Board determines to act to the contrary, the law requires that it do so by a majority plus one of the full membership and the DC Department of Planning must be notified of the reasons for the decision.

The Town of Fishkill Planning Board reviewed the application and commented that the proposed signage is both inconsistent with the area zoning and the Greenway principles. Further, the proposed sign is at variance with a signage ordinance currently in review by the Town Board. They recommend the variance not be approved and that the applicant reconsiders its proposal in favor of signage that favorably reflects the Greenway principles and if adopted, the Town of Fishkill Sign Ordinance.

David Gelinas, representing Blue Seal Feeds, presented to the Board. Blue Seal Feeds has asked him to come before the Board. They have changed their image and would like to upgrade their sign. Mr. Gelinas stated that he has been in the area and there are several roadside signs within the bounds of their stores that are much larger than Blue Seal Feeds. Within a half-mile and even a quarter mile's distance there are billboards that are twelve times the size of this sign. This is advertising for people who don't even own the property.

Mr. Gelinas advised that Blue Seal Feeds has been there for 27 years and their sign is 22ft from the road. Other signs are larger and roadside. As a hardship, the Blue Seal Feeds' sign and business are being overlooked.

Chairman Silverstein asked for verification that the current sign is 48 sq. ft. Mr. Gelinas stated that supposedly it was but in speaking to the residents of Fishkill he was told that the gas stations on the same road with much larger signage, are not considering the price portion of the sign as square footage. The Blue Seal Feeds sign is in poor condition and they are looking to upgrade their sign and add three lines of tracking. They will not go over the square footage that they currently have once they put the tracking on which, for the gas station, is not counted as square footage. Mr. Gelinas stated that it should be considered the same. Chairman Silverstein asked for verification that applicant is requesting that the lineage portion of the message board be treated the same as the Citgo Gas Station. Since their informational pricing is not counted in their square footage, the applicant wants the same courtesy with the Blue Seals sign. Mr. Gelinas confirmed that was what he was asking.

Edward Peters stated that it was a state law. Chairman Silverstein advised that he was aware of it. He advised Mr. Gelinas that regarding the gas pricing section, it is a state law and Blue Seals Feeds is not protected by it. Mr. Gelinas stated that it is their intent to advertise with pricing on it just as the gas station advertises its unleaded and super-unleaded gas. Chairman Silverstein stated that the Board is not agreeing or disagreeing, but the fact is that the gas station is protected by law and Blue Seal Feeds is not. There is a big difference.

Marc Breimer advised that he drives by Blue Seal almost every day and wondered why the sign is so far off of the road to begin with. Mr. Gelinas stated that it was originally proposed that way 27-28 years ago when they took over the building. At that time they didn't know if there might be changes to the road and they didn't want to have to move the sign if there was.

Mr. Briemer asked if it was an option to create a sign that was more compliant and move it closer to the road. Mr. Gelinas stated that there are utility lines directly in front of the location of the sign and guide lines to keep the pole in that position.

Chairman Silverstein asked Mr. Gelinas if he had been informed of the proposed sign ordinance for the town. Mr. Gelinas replied that he was not familiar with it. He advised that he had heard from the Blue Seal Fishkill store that there was a Board coming up later this week. He advised that he has been planning on appearing before this Board for the last three months and he has received nothing. Chairman Silverstein advised that nothing has been resolved, so he would have not received anything. The Chairman advised that he does not have the information regarding the proposal. Rebecca Valk advised that it will be introduced at the meeting on August 17. Chairman Silverstein advised that he is not sure how the proposal will affect the ZBA. Ms. Valk gave the timeframe that if the Town Board does not want to make any revisions from the time that it is introduced, it could be adopted within one month.

The Chairman asked Ms. Valk, regarding the new ordinance, can the Board adjourn the meeting until they find out what the recommendations will be or is that not a ZBA concern. Ms. Valk replied that the ZBA may adjourn to hear comments at the Town

Board Meeting, but she advised that she is apprehensive that if the Town Board takes some time with the proposal, the ZBA might not want to continually adjourn this Hearing.

The Chairman stated that his concern is that if the meeting is closed tonight, the Board will be forced to vote on it at the next meeting. If it is adjourned, the ZBA will get some general information regarding what the Town is proposing. Ms. Valk agreed and advised that there will also be a Public Hearing and the ZBA may be interested in the comments made at that meeting. It may be information that the ZBA finds useful. Marc Breimer agreed and advised that it would be necessary to have more information.

The Chairman commented that this is not a reflection on how the Board feels, but with regards to the Town Board's proposal, he would be very uncomfortable, especially if it turns out that the applicant would not be allowed to do this.

Bruce, Blue Seal Feeds Fishkill Store Manager, asked if the Hearing is adjourned tonight and they return in a month, the same considerations will be viewed again and then it will be another month before the decision will be made. Chairman Silverstein advised that it is the normal procedure, but they have on very few occasions, adjourned a Hearing for reasons and then voted on it at the closing. This is usually done for technical reasons. He cautioned that he is not advising that they are going to do it in this case, only that it has been done in the past.

Bruce asked if, in theory, a week from now an answer can be given yes or no and not necessarily have to wait for the next meeting a month from now. Chairman Silverstein advised that the Board Members may contact each other one on one but the Board will not meet again after this meeting. Since the ZBA does not know what the Town Board is going to do, it may significantly change the sign that you put up and it may have to be taken down in a year or two. The Chairman commented that he may address the Town Board regarding this issue and to have the Town Board inform the ZBA of proposals to help guide the ZBA in making informed decisions.

Bruce stated that one of the things that they are trying to accomplish by placing a new sign up is not only to freshen up the sign, but the store was opened in 1979 and there are still to this day, people who come in and state that they didn't know it was a store. They thought it was a warehouse. They want to use the new sign to let people know that it is a retail establishment and not a warehouse.

Councilman Ronald Leenig commented that the sign ordinance is being driven by the Comprehensive Plan. It has been worked on for the last two years. Questioners were sent out to as many people as possible and this is what had come back. Residents are concerned with signs and building designs. It has now come before the Town Board. There will be a Public Hearing and they will listen to comments and make their decision.

The Chairman stated that he would like to know what the proposals are before contemplating voting on this variance request.

David Gelinas advised that Blue Seal is looking to upgrade their sign. They are concerned with their image and the way their sign looks. And again all along the road there are billboards. There is a big difference between the company that wants to take care of their image and a billboard that is sold along the side of the road. Ed Peters stated that he believes the billboards were there prior to zoning. The Chairman agreed and advised that billboards are different.

Ronald Critelli asked what time the Town Board Meeting was scheduled for. Councilman Leenig advised that it is at 9:30am. Bruce asked what was happening on Thursday. His communication from their corporate office was that the new sign law was going to be on Thursday. Chairman Silverstein advised that the Town Board Meeting is going to be in the morning at 9:30am. Councilman Leenig asked if there is a Planning Board Meeting this week. April Callahan advised that the Planning Board Meeting is scheduled for next week.

David Gelinas asked if the meeting would be open for public comment. Councilman Leenig advised that it would not. They will propose it and then it will be published in the newspaper and the Public Hearing will be set. The Chairman advised that after the meeting the ZBA will have some guidelines.

Chairman Silverstein called for a motion to close or adjourn the Public Hearing.

Marc Breimer made the motion to adjourn the Public Hearing.

Ronald Critelli seconded.

Motion Carried

Barry Silverstein - Aye

Ronald Critelli - Aye

MaryAnn Leenig – Aye

Marc Breimer - Aye

April Callahan - Aye

New Business

Councilman Ronald Leenig addressed the Board. He stated that he recognizes the independence of the ZBA and in no way will try to influence the Board. He stated that his only comment as a Town Board Member is that his comment regarding the Comprehensive Plan came from the residents who are working on this to build a better community. He pointed to the place where Donald Worthy had been sitting. Councilman Leenig stated that he understands his comment, but something that happened in 1948 is not best for the community that we have now. There are several things to consider, such as our natural resources, our wetlands, conserving our open space. This is what the residents want to do. The Town has changed since 1948 and we are doing our best to build the community. We do that by zoning laws.

Chairman Silverstein advised David Gelinas and Bruce that the Councilman was not directly referring to their sign.

MaryAnn Leenig asked who was sitting in the front row. Chairman Silverstein stated that it was Donald Worthy. He advised the audience that Mr. Worthy owns some property that is presently before the Board. He also advised that interestingly Mr. Worthy is also a member of the ZBA in Beacon.

Marc Breimer made the motion to adjourn the ZBA Meeting.

MaryAnn Leenig seconded.

Motion carried.

Meeting adjourned at 7:58 pm.

Respectfully submitted,
Nancy Fitzgerald-Lecker
ZBA Clerk